IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 3893 of 2004(L)

ID.96/1995 of LABOUR COURT, ERNAKULAM
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PETITIONER:

ERNAKULAM REGIONAL CO-OPERATIVE
MILK PRODUCERS' UNION LTD.NO.E-150 (D)
THRISSUR DAIRY, RAMAVARMAPURAM, THRISSUR-680 031,
REPRESENTED BY ITS DAIRY MANAGER.

BY ADV. SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

RESPONDENTS:
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1. V.N. MOHANAN, VAKKATH HOUSE,
CHEMBUTHAK P.O., PATTIKKAD, THRISSUR DISTRICT.

2. THE LABOUR COURT, ERNAKULAM.

BY ADV. SRI.K.ABRAHAM LAL
BY GOVERNMENT PLEADER SMT.T.B.RAMANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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W.P.(C) NO.3893/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE APPOINTMENT ORDER DT. 23.10.91 ISSUED TO THE 1ST RESPONDENT BY THE PETITIONER MANAGEMENT APPOINTING HIM AS SALESMAN.

EXT.P2:- COPY OF THE JOINING REPORT DT. 28.10.91 OF THE 1ST RESPONDENT.

EXT.P3:- COPY OF THE LEAVE LETTER DT. 28.12.91 SUBMITTED BY THE 1ST RESPONDENT.

EXT.P4:- COPY OF THE LETTER OF THE MANAGEMENT DT. 10.1.92 ISSUED TO THE WORKMAN REJECTING LEAVE AND DIRECTING TO REPORT FOR DUTY IMMEDIATELY.

EXT.P5:- COPY OF THE CHARGE SHEET DT. 27.1.1992 ISSUED TO THE 1ST RESPONDENT BY THE PETITIONER.

EXT.P6:- COPY OF THE LETTER DT. 1.4.92 OF THE SUPERINTENDENT OF CENTRAL PRISON, KANNUR.

EXT.P7:- EXTRACT OF CLAUSES 29.5, 29,31 AND 30 , 20 OF THE CERTIFIED STANDING ORDER.

EXT.P8:- COPY OF THE SHOW CAUSE NOTICE DT. 24.6.92 ISSUED TO THE 1ST RESPONDENT.

EXT.P9:- COPY OF THE CLAIM STATEMENT OF THE WORKMAN FILED IN ID NO.96/95.

EXT.P10:- COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER MANAGEMENT IN ID 96/95 .

EXT.P11:- COPY OF THE REJOINDER FILED BY THE WORKMAN IN ID 96/95.

EXT.P12:- COPY OF THE AWARD PASSED BY THE 2ND REP.BY ON 30.9.03 IN ID 96/05.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.3893/2004-L & I.A.No.3813/2007

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Dated this the 8th day of August, 2007.

JUDGMENT

I.A.No.3813 allowed.

2. The first respondent was appointed by the petitioner Ernakulam Regional Co-operative Milk Producers' Union Limited (MILMA) as per Ext.P1 order dated 23-10-1991 as a Salesman. In terms of Ext.P1 appointment order, the petitioner was to be on probation for one year from the date of joining the service. It is evidenced by Ext.P2 that the first respondent joined duty on 28-10-1991. This means that he would be on probation for a period of one year from then. Alleging that after the rejection of Ext.P3 application for leave, the first respondent was on unauthorized absence from 1-1-1992.

Disciplinary proceedings were initiated against the first respondent leading to his removal from service. The first respondent challenged that decision before the Labour Court initially resulting in an ex parte order against the management. That was set aside by this Court and the case remitted. The Labour Court, thereafter, examined the rival contentions and concluded that though there were certain procedural irregularities in the enquiry, that had not resulted in any injustice to the workman. Accordingly, the enquiry was upheld. However, the Labour Court interfered with the punishment and ordered reinstatement without back-wages and continuity of service excluding a period of three years during which the first respondent was suffering the sentence of rigorous imprisonment and was housed in the Central Prison in Kannur following trial and conviction for the offence punishable under Section 326 IPC.

3. As per Ext.P1, the first respondent was on

probation. The unauthorized absence attributed to him was during the currency of the probation period. The workman has to successfully complete the period of probation as a condition for the first respondent to have continued in the service of the petitioner, had not the petitioner extended his period of probation. The fact remains that the first respondent became an accused person and was convicted and sentenced for offence punishable under Section 326 IPC during his probation period following Ext.P1 appointment. The basic defence set up by the first respondent in opposition to this writ petition is that the rejection of Ext.P3 application for leave for 15 days is legal and that the said application for leave supported by medical certificate ought to have been granted. But the fact remains that after he absented from service with effect from 1-1-1992, the first respondent suffered the conviction attributable to a prior conduct and he had to undergo punishment. Under such circumstances, it was open to the petitioner management to decide whether the

first respondent should be permitted to continue in service from the point of time he was on probation.

4. The workman has not challenged the award that the finding of the enquiry does not require to be interfered with. That has become final. Having found so, the Labour Court acted in excess of jurisdiction on the facts and circumstances of this case, in proceeding to act under Section 11A of the Industrial Disputes Act, 1947 to order reinstatement of service even if it is without back-wages and with continuity of service excluding the three year period during which the first respondent remained imprisoned suffering the sentence imposed on him by the criminal court.

5. Under the aforesaid circumstances, I find no ground to sustain the impugned award in so far as it is against the management.

In the result, the writ petition succeeds and Ext.P12 award in so far as it is in favour of the first respondent is quashed.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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